



Town of Kittery

200 Rogers Road, Kittery, ME 03904

Board of Appeals
Meeting Agenda, Council Chambers
Tuesday, November 10, 2015
Regular Meeting - 7:00 P.M.

1. Call to Order; Introductory; Roll Call
2. Pledge of Allegiance
3. Agenda Amendment and Adoption
4. Executive session, if required
5. Public Hearings

Robert & Stacey Emery, 352 Haley Road, Residential-Rural R-RL, requesting
Miscellaneous Variation Request, per Title 16.6.4.3.D, to the terms of Title 16.8.25.5,
seeking approval for ADU where existing garage is located.

6. Unfinished Business
7. New Business
8. Acceptance of Previous Minutes: October 13, 2015
9. Board Member or CEO Issues or Comment
10. Adjournment

WORKSHOP FOLLOWING MEETING



TOWN OF KITTERY
CODE ENFORCEMENT OFFICE
200 ROGERS ROAD, KITTERY, MAINE 03904
PHONE: (207) 475-1305
FAX: (207) 439-6806

Application to the
BOARD OF APPEALS

DATE SUBMITTED	11-2-15
MAP & LOT	MAP 41 LOT 13
ASA FEE	230.00
DATE PAID	11-2-15
DATE COMPLETE	11-2-15
HEARING DATE	11-10-15

MISCELLANEOUS VARIATION REQUEST

I have reviewed Town Code Title 16, Board of Appeals By-Laws, and the Ordinance(s) pertinent to this application. My request is based on Title 6.4.3, Miscellaneous Variation Request and:

- ☐ Nonconformity (Article III of Chapter 16.7);
- ☐ Nonconforming Residential Use in Commercial Zones Expansion (Section 7.3.5.3);
- ☐ Nonconforming Lots of Record (Section 7.3.5.9);
- ☐ Sign Violation and Appeal Standards (Section 8.10.3);
- ☐ Parking, Loading and Traffic Standards (Article IX of Chapter 16.8);
- ☐ Temporary, Intra-Family Dwelling Unit (Article XXI of Chapter 16.8); or
- ☒ Accessory Dwelling Units Standards (Article XXV of Chapter 16.8).

**IN ORDER FOR AN APPLICATION TO BE DETERMINED COMPLETE AND SCHEDULED FOR A PUBLIC HEARING:
APPLICATIONS FORMS MUST BE COMPLETE; 10 SETS OF DOCUMENTATION PROVIDED; & ALL FEE(S) PAID**

PROPERTY INFORMATION

ADDRESS	352 Haley Road				
MAP	41-13	LOT #		LOT SIZE	1.26A
BASE ZONE(S):	RR		OVERLAY ZONE(S):		
The subject property: [is / is not] in a Shoreland overlay or Resource Protection zone; [is / is not] in a floodplain; AND [does / does not] have outstanding code violations; and, if so, granting this appeal provides resolution .					
PROPERTY OWNER: I have right, title or interest in the affected property, or issue, as shown by:					
NAME(S)	Robert and Stacey Emery				
MAILING ADDRESS	352 Haley Rd.				
CITY	Kittery Pt	STATE	ME	ZIP CODE	03905
PHONE No.			e-MAIL:		

NOTE: You may have an attorney represent you, but such representation is not necessary. You may also be represented by a designated agent (e.g. family member, neighbor, engineer, contractor) as you so desire.

APPLICANT (if different) I am an agent of the applicant with standing, as shown by:

Robert and Stacey Emery					
NAME(S)					
MAILING ADDRESS	352 Haley Rd.				
CITY	Kittery Pt	STATE	ME	ZIP CODE	03905
PHONE No.			e-MAIL:		

To the best of my knowledge, all information submitted on and with this application is true and correct.

Date: 11/2/15

By: Robert L Emery
(Signature)
Robert L Emery
(Print Name)

AFFIRMATIONS (Please read and check all the boxes to confirm)

Identify relevant Town code sections:

TITLE	16	CHAPTER	8	SECTION	25	5				PAGE	232
TITLE		CHAPTER		SECTION						PAGE	
TITLE		CHAPTER		SECTION						PAGE	

I understand that the Board of Appeals:

- ☒ May hear and decide on a miscellaneous variation request within the limitations set forth in the Title 16 Section identified in Item A-H on Page 1.
- ☐ Appears to have jurisdiction to hear this request; hearing must be held within 30 days of this request filing; application must be complete; and, public and abutter notice must be made no less than seven days prior to the scheduled hearing.
- ☒ Will conduct this hearing De Novo (meaning the Board acts if it were considering the question for the first time, affording no deference to the preceding agency decisions; may receive new evidence and testimony consistent with this Town Code Title 16 and the Board rules; and, conduct additional hearings and receive additional evidence and testimony).
- ☒ Will determine my Burden of Proof:
- 1) What does the ordinance/statute require the applicant to prove?
 - 2) Does the ordinance/statute prohibit or limit the type of use being proposed?
 - 3) What factors must be considered under ordinance/statutes to decide whether to grant the request?
 - 4) Is the evidence presented substantial? Is it credible? Is it outweighed by conflicting evidence?
- ☒ Requires substantial evidence as the Standard of Review for this request, meaning:
- "More than a mere scintilla". It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The preponderance of evidence standard is met if the proposition is more likely to be true than not true. The standard is satisfied if there is greater than fifty percent chance that the proposition is true.*
- ☒ May hear, decide, and approve variations in accordance with the criteria listed in Town Code Title 16, Sections 6.6.1, Factors, and 6.6.2, Considerations; and may consider other Title 16 standards.
- ☒ Approval may not be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any state law which the municipality is responsible for enforcing.
- ☒ Is only legally authorized to deal with issues arising from the list above, and do not include such matters as constitutionality, civil rights, criminal acts, property disputes, surliness, etc.
- ☒ Will not even hear my appeal unless I can show that I have "standing" to have my complaint heard;
- ☐ Purpose of establishing my case for "standing" is to limit appeals on an issue to those who are directly involved and/or affected.
- ☒ Will try to decide my case based only on the factual information presented and what is written in the pertinent Town ordinance/regulation, State statute(s)/regulation(s) and the rulings of the State Supreme Judicial Court.
- ☒ Tries to make decisions it believes would be upheld if appealed to Superior Court.

Additional Information

1. Please complete this application in its entirety. You may add other information as may be needed to adequately describe the purpose of seeking relief from the Board of Appeals.
2. A detailed plot plan or diagram must be provided showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings or alterations, and any natural or topographic features (wetlands, streams, etc) of the lot in question. This plot plan should also include the distances to the nearest structures on abutting properties and show the detail of any rights-of-way, easements, or other encumbrances.
3. Blueprints, surveys, photos and other documents may be helpful in explaining your request and should be included.

STATEMENT:

Describe general nature of the request:

Our request is for a miscellaneous variance of code Article XXV chapter 16.8 to increase the square footage for a modular home. The code for Accessory Dwelling Unit is a maximum of 800sqft. The Modular home would be placed where the present garage exists. We will need to remove the slab and garage to provide for an adequate foundation for the modular home. The modular home square footage is 1120sqft. The area of the garage is 759sqft which means we will need additional sqft for the Modular home. It my understanding that uninhabitable living space has an impact on the required number of square feet. Based upon IBC state code it provides for a takeaway for uninhabitable space which Schiavi Custom Builders plans indicate a living space of 619sqft. (See plans for Modular home and the email from Schiavi)

The home is within the needed setbacks, and doesn't have any impact on streams and wetlands. It would not have any significant impact on the neighborhood.

[The Commodore Corporation](#)

[About Us](#)

[Photo Gallery](#)

[Find a Home](#)

[Find a Builder](#)



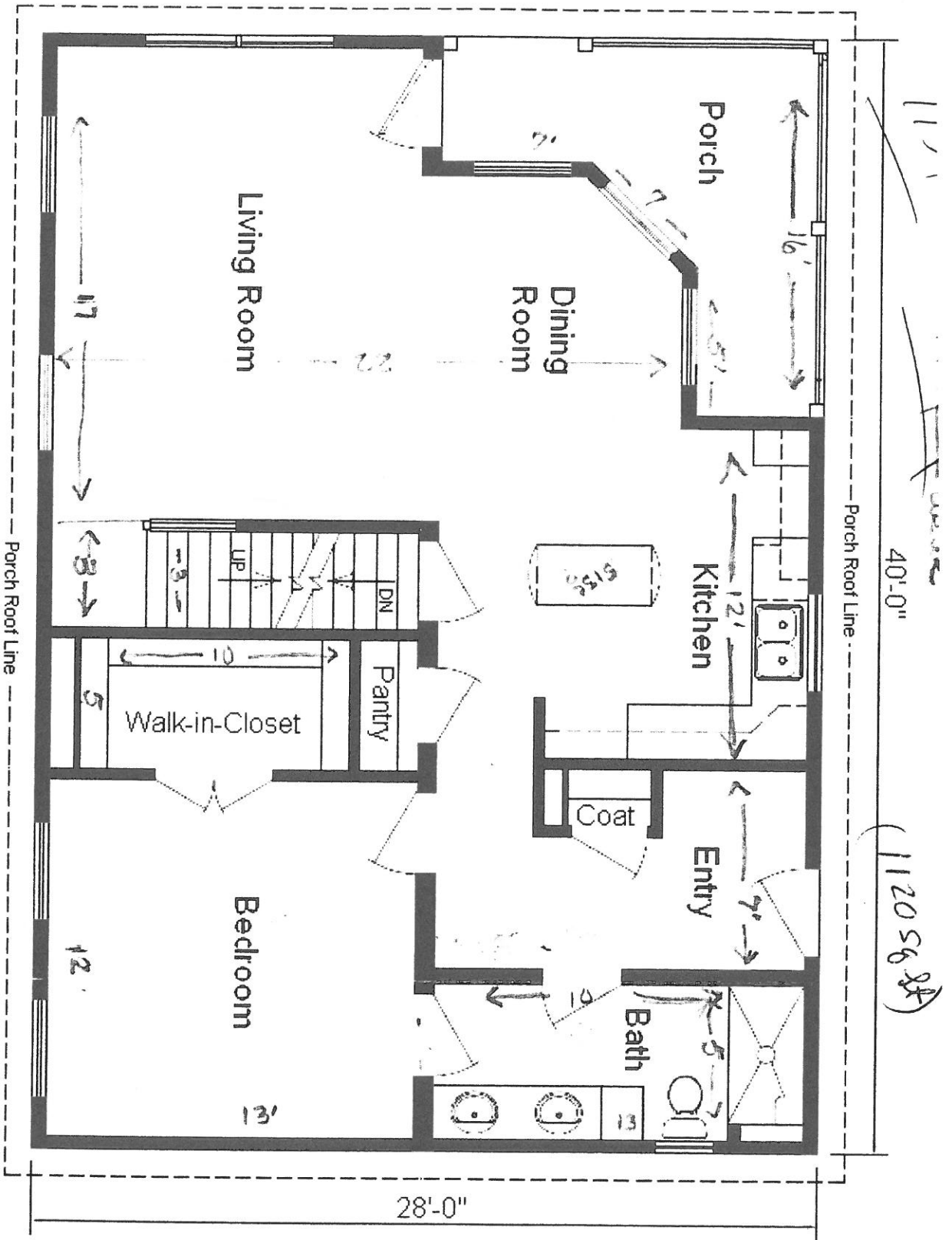
[Standards & Features Options](#)

HOME COMPONENTS

Complete Kitchen Island Created

Complete and Ready

Complete Air Return System



Quaint, Open, Bright, Cute, Lovely, Perfect! These are only a few of the words customers have used to describe this home. Our Custom Cottage Style Cape is our most popular model home since the Pacific Avenue. As we create your home, will your favorite feature in the Cottage be part of it?



G.RICHARD EMERY <pieceofcake1@gmail.com>

Elevations and floor plans

2 messages

Tue,
Oct
27,
2015
at
1:40
PM

Frank Proulx at Schiavi Custom Builders

<01kaz6cbn0ephjnhvmhwiv5qopjmnlsiogqxymhvf0_ix_1944f14e8dc@leads.buildertrend.net>

Reply-To: Frank Proulx at Schiavi Custom Builders

<01kaz6cbn0ephjnhvmhwiv5qopjmnlsiogqxymhvf0_ix_1944f14e8dc@leads.buildertrend.net>

To: pieceofcake1@gmail.com

Dick.

Your request for floor plans and elevations reaches far beyond what I can give out without a commitment deposit from you engaging Schiavi Custom Builders as your home builder. I can however give you dimensions for the various rooms on the flyer that I gave you.

It goes like this:

Master Bedroom is 13'-1½" X 12'-9" for 164 sq. ft.

Living Room is 13'-1½" X 16'-11½" for 227 sq. ft

Kitchen and Nook is 25'-6" x 13'-1½" **less the porch 105 sq. ft.....** for 228 sq. ft. **Totaling 619 sq .ft. of living space**

Master bedroom Closet is 4'-8" x 13'-1½" 62.5 sq. ft. (not living space)

Side entrance hallway is 92 sq. ft. (not living space)

Master bath is 72 sq. ft. less the space occupied by the fixtures.

You also have a little bit of hallway to consider and the loss of the space occupied by the stairway.

As for the height of the building it is an 8' first floor built on a 2" x 10" floor joist system and then you have a 12"/12" roof pitch on top of the first floor. It should be quite evident from the picture that I gave you last week. So depending on how high the foundation sticks out of the ground will determine the actual height of the building.

I hope this information is useful to you. If you need more explicit information for the appeals board let me know and we will work something out.

My best,

Frank Proulx

Client Representative



Built for Living<<<

www.schiavicustom.com

754 Main St, Oxford, ME 04270

207 539 9600

207 539 1823 Direct line

207 333 8382 Cell

CONSTRUCTION DETAIL				CONSTRUCTION DETAIL (CONTINUED)			
Element	Cd	Description	Element	Cd	Description		
Style	01	Ranch					
Model	01	Residential					
Grade:	03	Average					
Stories:	1	1 Story					
Occupancy	14	Wood Shingle					
Exterior Wall 1	03	Gable/Hip					
Exterior Wall 2	03	Asph/F Gls/Cmp					
Roof Structure:	05	Drywall/Sheet					
Interior Wall 1	12	Hardwood					
Interior Wall 2	14	Carpet					
Interior Flr 1	02	Oil					
Interior Flr 2	05	Hot Water					
Heat Type:	01	None					
AC Type:	03	3 Bedrooms					
Total Bedrooms	2	1					
Total Bthrms:	0	5 Rooms					
Total Half Baths	0	Average					
Total Xtra Fixtrs	0	Average					
Total Rooms:	02						
Bath Style:	02						
Kitchen Style:	01						
OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)							
Code	Description	Su	Sub Des	Units	Unit Price	Year	% Dep R Qu Adj Apprais Valu
FPL1	FIREPLACE	B		1	6700.00	1976	100 1.00 0.00 4,200
FGR1	GARAGE-AV	L		768	40.00	1998	50 0.00 0.00 15,400
BUILDING SUB-AREA SUMMARY SECTION							
SUBAR	Description	LIVING	GROSS	EFF AR	Unit Cost	Undeprec Value	
BAS	First Floor	1,716	1,716	1,716	86.68	148,743	
FBM	Basement, Finished	0	442	155	30.40	13,435	
FOP	Porch, Open, Finished	0	240	48	17.34	4,161	
UBM	Basement, Unfinished	0	702	140	17.29	12,135	
Ttl Gross Liv / Lease Area		1,716	3,100	2,059			

20

12

FOP

12

20

22

26

BAS

26

22

10

BAS

UBM

13

13

34

BAS


FBM

34

13

44

13



Property Location
Vision ID 2730

352 HALEY ROAD

Account # 41/13

Map ID 41/13

Bldg # 1

Bldg Name
Sec # 1 of 1

Card # 1 of 1

State Use 0130
Print Date 11/4/2015 7:44:15 AM

CURRENT OWNER		TOPO		UTILITIES		STRT / ROAD		LOCATION		CURRENT ASSESSMENT			
EMERY, STACY-LEE		4	Rolling	2	Public Water	1	Paved			Description	Code	Appraised	Assessed
EMERY, ROBERT L				6	Septic			3	Rural	RESIDNTL	0130	161,200	161,200
352 HALEY ROAD										RES LAND	0130	72,800	72,800
										RESIDNTL	0130	15,400	15,400
		LOCATION											
		4513											

KITTERY POINT ME 03905-5623		Other ID		SUPPLEMENTAL DATA		TIF		ASSOC PID#		PREVIOUS ASSESSMENTS (HISTORY)								
		Gis ID	2730							Year	Code	Assessed	Year	Type	Assessed	Year	Code	Assessed
										2015	0130	161,200	2014	0130	161,200	2013	0130	156,100
											0130	72,800		0130	72,800		0130	74,100
											0130	15,400		0130	15,400		0130	9,800
		Total		249,400		249,400		249,400		Total		249,400		249,400		Total		240,000

EXEMPTIONS		OTHER ASSESSMENTS				
Year	Code	Description	Amount	Number	Amount	Comm Int
Total						

ASSESSING NEIGHBORHOOD	
NBHD	NBHD Name
0001	Tracing
Batch	

DR.OFFICE IN FBIM	
GREY IA	

Appraised Bldg. Value (Card)		157,000
Appraised XF (B) Value (Bldg)		4,200
Appraised OB (L) Value (Bldg)		15,400
Appraised Land Value (Bldg)		72,800
Special Land Value		0
Total Appraised Parcel Value		249,400
Valuation Method		C
Total Exemptions		0

Net Total Appraised Parcel Value		249,400
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BUILDING PERMIT RECORD		VISIT / CHANGE HISTORY												
Permit ID	Issue Date	Type	Description	Amount	Insp Date	% Comp	C of O	Comments	Date	Type	IS	ID	Cd	Purpose/Result
3437	02-26-2007	PL	Plumbing	22,000	04-21-2008	100	10-01-2007	Internal - REVISED	04-21-2008	PR		PR	53	Bldg Permit Inspection
07-038	02-05-2007	RE	Remodel			100		Renovate 22'x25' gar	05-12-2007	PR		PR	53	Bldg Permit Inspection
									12-08-1997	AB		AB	00	Measur+Listed
									04-25-1988	CR		CR	00	Measur+Listed

LAND LINE VALUATION SECTION																	
B #	Code	Description	Zone ID	Front	Depth	Units	Unit Price	I. Fact	S.A.	Ac Di	C. Fact	St.	Adj	Notes	Special Pricing	Adj Unit Price	Land Value
1	0130	PRI RES	RR	0	0	43,560	1.50	1.100	5	1.000	1.00		1.00		0	1.65	71,900
1	0130	PRI RES	RR	0	0	0	3,500.00	1.000	0	1.000	1.00		1.00		0	3,500.00	900
Total Card Land Units										1.260	AC	Parcel Total Land Area		1.2600	Total Land Value		72,800



Town of Kittery, Maine

This information has been compiled from various public and private sources. While every attempt has been made to provide accurate information, neither the municipality nor the service host guarantee the accuracy of information provided herein.

**TOWN OF KITTERY, MAINE
BOARD OF APPEALS**

**UNAPPROVED
October 13, 2015**

Members present: Brett Costa, Craig Wilson, Gary Beers, Jeffery Brake, Niles Pinkham, Brian Boyle
Staff: Robert Marchi, Code Enforcement Officer

Chairman Costa called the meeting to order at 7:05 p.m.

1. Call to Order, Introductory, Roll Call

2. Pledge of Allegiance

3. Agenda Amendment and Adoption

The Chairman adopted the agenda as presented.

4. Executive session - NONE

5. Public Hearings - NONE

6. Unfinished Business

Title 14 update: Chairman Costa indicated that we wished to complete his review which he would in a week or so. Mr. Wilson suggested that a workshop with Council could be arranged for them to consider with the current package. Chairman Costa said he would set that up.

7. New Business

a. Appeal/Request Application Forms - Final – Approval

Mr. Beers moved to the Board's Appeal/Request Application forms as presented.

Mr. Brake seconded.

Mr. Wilson asked to hear the Code Enforcement Officer's view on the forms. Mr. Marchi replied that the office had reviewed them and felt they would be beneficial to use. Mr. Wilson queried whether they should be approved for a probationary period so that a review within a time frame would be required. Discussion ensued with the conclusion that they could be approved and the record reflect that the Board would conduct an administrative review in six months.

Ayes: 6 Nays: 0 Abstain: 0 Motion carried.

b. Board Frequently Asked Questions – Final – Approval

Mr. Beers moved to the Board's Frequently Asked Questions document as presented.

Mr. Wilson seconded.

Mr. Beers explain the implication of the hyperlinks in the file, oriented in blue and underlined. If anyone opens the file in an e-mail, or downloaded to their computer, a simple CTRL-Click on that phrase would send the user directly the Town website page selected. He said that a few of the selections only went to the CEO page because some of the documents had not been loaded on the website, such as the Board By-laws.

Ayes: 6 Nays: 0 Abstain: 0 Motion carried.

35 **8. Acceptance of Previous Minutes:**

36 The minutes of August 25, 2015 were accepted as presented.

37 **9. Board Member or CEO Issues or Comment**

38 Mr. Beers queried Mr. Marchi as to whether any appeal/requests had been filed for the meeting two
39 weeks. Mr. Marchi said no and Mr. Beers suggested in that three members were running for Town
40 Council it may be best to not have a meeting or workshop on October 27th. The Board agreed.

41 Mr. Wilson said in light of the possibility of three members being elected it would be a good idea to
42 address Board recruitment effort which could be done in the workshop.

43 **10. Adjournment**

44 **Mr. Beers moved to adjourn. Seconded by Mr. Wilson. Motion carried unanimously.**

45 The Board of Appeals meeting of October 13, 2015 adjourned at 7:28 p.m.

**TOWN OF KITTERY, MAINE
BOARD OF APPEALS**

**APPROVED
August 25, 2015**

Members present: Brett Costa, Craig Wilson, Gary Beers, Jeffery Brake

Members absent: Niles Pinkham, Brian Boyle

Staff: Robert Marchi, Code Enforcement Officer

Chairman Costa called the meeting to order at 7:05 p.m.

1. Call to Order, Introductory, Roll Call

2. Pledge of Allegiance

3. Agenda Amendment and Adoption

The Chairman adopted the agenda as presented.

4. Executive session - NONE

5. Public Hearings - NONE

6. Unfinished Business – NONE

7. New Business – NONE

8. Acceptance of Previous Minutes:

The minutes of August 11, 2015 were accepted as presented.

9. Board Member or CEO Issues or Comment

Mr. Beers suggested if there was no formal business, appeals, or requests for the Board to deal with on a given meeting night, a formal agenda and meeting should not be conducted. The meeting would simply be announced as a workshop. The Board concurred.

10. Adjournment

Mr. Beers moved to adjourn. Seconded by Mr. Wilson. Motion carried unanimously.

The Board of Appeals meeting of August 25, 2015 adjourned at 7:12 p.m.